

In re: PHILIP G. COX.
P&S Docket No. D-02-0019.
Decision and Order.
Filed November 25, 2002.

P&S – Default – Payment, failure to make prompt – Funds on deposit, failure to maintain adequate funds.

Ann Pames, for Complainant.
Respondent, Pro se.

Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain, Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the Respondent willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), hereinafter referred to as the Act, by failing to pay when due the full purchase price of livestock. The complaint also alleged that Respondent further violated the Act and regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*), hereinafter referred to as the regulations, by failing to maintain an adequate bond or its equivalent as is required.

The complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*), hereinafter the Rules of Practice, were served on Respondent by certified mail on July 5, 2002. Accompanying the complaint was a cover letter informing Respondent that an answer must be filed within twenty (20) days of service and that failure to file an answer would constitute an admission of all of the material allegations in the complaint and a waiver of the right to an oral hearing.

Respondent has failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the complaint, which are admitted by Respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Philip G. Cox, hereinafter referred to as Respondent, is an individual whose mailing address is 431 Old Mayfield Mill Road, Glasgow, Kentucky 42141.
2. The Respondent, at all times material herein, was engaged in the business of a dealer buying and selling livestock in commerce for his own account and the account of others, and as a market agency buying livestock on a commission basis.

3. The Respondent, at all times material herein, was registered with the Secretary of Agriculture as a dealer and as a market agency to buy livestock on a commission basis.

4. As set forth in paragraph II of the complaint, Respondent purchased livestock, and in purported payment issued checks that were returned unpaid by the bank upon which they were drawn because Respondent did not have sufficient funds available in the account upon which the checks were drawn to pay the checks when presented.

5. As set forth in paragraph II of the complaint, Respondent purchased livestock and failed to pay, when due, the full purchase price of such livestock.

6. As set forth in paragraph II of the complaint, Respondent purchased livestock and failed to pay the full purchase price of such livestock.

7. As set forth in paragraph III of the complaint, Respondent engaged in the business of a dealer and market agency without obtaining the necessary bond or equivalent as is required by the Act and regulations.

Conclusions

By reason of the facts alleged in Findings of Fact 4, 5, and 6, Respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228(b)).

By reason of the facts alleged in Finding of Fact 7, Respondent has violated sections 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

Respondent did not file an answer within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) which constitutes an admission of all of the material allegations in the complaint. Complainant has moved for the issuance of a Decision Without Hearing by Reason of Default, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Accordingly, this Order is entered without hearing or further procedure.

Order

Philip G. Cox, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented;
2. Failing to pay, when due, the full purchase price of livestock;
3. Failing to pay the full purchase price of livestock; and
4. Engaging in the business of a dealer and market agency without first obtaining an adequate bond or bond equivalent.

Respondent Philip G. Cox is hereby suspended as a registrant under the Act for a period of five (5) years and thereafter until he obtains the required bond or bond equivalent. Provided, however, that upon application to Packers and Stockyards Programs, a Supplemental Order may be issued terminating the suspension of the Respondent at any time after 150 days upon demonstration by Respondent that the livestock sellers identified in the complaint have been paid in full and upon demonstration that the required bond or bond equivalent has been obtained. Further, this Order may be modified upon application to Packers and Stockyards Programs to permit Respondent's salaried employment by another registrant or a packer after the expiration of the 150 day period of suspension, upon demonstration of circumstances warranting modification of the Order.

This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service, pursuant to sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final January 6, 2003. - Editor]
